

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL CARBONI and	:	
C.O.M. TRADING, INC.,	:	06 Civ. 15488 (RJH)
	:	ECF Case
Plaintiffs,	:	
	:	AFFIDAVIT OF ROBERT
– against –	:	M. LAKE
	:	
BOB LAKE and R.J. O'BRIEN &	:	
ASSOCIATES, INC.,	:	
Defendants.	:	

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STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROBERT M. LAKE, being duly sworn, deposes and says:

1. I am named as a defendant in this action as Bob Lake. I am a senior vice president of the other defendant, R.J. O'Brien & Associates, Inc. ("RJO"). I have been employed by RJO at all relevant times.

The Parties and the Exchange

2. RJO is a futures commission merchant registered with the Commodity Futures Trading Commission and the National Futures Association. A futures commission merchant, or "FCM," is the commodity futures market analog to the securities brokerage house. An FCM solicits, accepts, enters and clears orders for the purchase or sale of commodity futures and options contracts, and it accepts payment from (or extends credit to) those whose orders are accepted.

3. RJO is a clearing member of the New York Mercantile Exchange (“NYMEX” or the “Exchange”). A clearing member is a member of an exchange clearing house responsible for the financial commitments of its customers. All trades of a non-clearing member must be registered and eventually settled through a clearing member.

4. Today, NYMEX order execution is increasingly electronic. Historically, clearing members used independent floor brokers to execute or “fill” orders on the floor of the Exchange.

5. At all relevant times, and at least into 2006, plaintiff Michael (Oscar) Carboni was a member of the Exchange who worked as a floor broker for NYMEX clearing members, including RJO. We are unfamiliar with Carboni’s company, plaintiff C.O.M. Trading, Inc.

The Email String

6. An email I wrote and by which plaintiffs allege I defamed them is actually part of the eleven email string annexed as Exhibit A. To make it easier to discuss the string, I have had the eleven messages numbered Email Nos. 1-11 and placed into chronological order in the document annexed as Exhibit B.

7. Email No. 1, sent December 7, 2005, is from Barry Isaacson of Alaron Trading Corporation (“Alaron”). Alaron is a non-clearing member of the Exchange. In December 2005, Alaron was in the process of moving its clearing business to RJO from another clearing member. In Email No. 1, Isaacson is discussing logistics of the move to RJO with an Alaron customer named Ira Epstein, who was interested in having Carboni do the floor brokerage for his trades through Alaron.

8. RJO, as the clearing member handling Alaron's business, would ordinarily be responsible for routing trades to floor brokers. Epstein's request that his trades be routed to Carboni therefore had to be approved and implemented by RJO.

9. Email Nos. 2-5, also from December 7, 2005, reflect a discussion among Epstein, Carboni and Isaacson on the Epstein proposal to use Carboni. I was copied on Email Nos. 5 and 6.

10. On the morning of December 13, 2005, Isaacson of Alaron sent Email No. 6 to Epstein, copying me and others, and asking Epstein to confirm understandings on cost and liability issues associated with Epstein's possible use of Carboni.

11. Epstein responded later that morning with Email No. 7. In Email No. 7, Epstein agreed on liability issues and asked Isaacson to elaborate on what costs might be presented. He also claimed to forward a message from Carboni which he called "scary if true." The forwarded text said:

Ira,

Yesterday in the Silver futures RJO is so buried with paper they forgot, that's right forgot to execute buying 600 march silver @ 877.00. It cost them 390,000.00. Please be careful using them for executions as they are way to [sic] busy to handle the paper load and continue to pick up old refco business as of this writing. I hope we can get our business completed this week and get you away from that atmosphere[.] I will contact Bob Lake today. I[']ll keep you informed.

Oscar Carboni
President, C.O.M. Trading Inc.

12. Isaacson's response to Email No. 7 was Email No. 8, which he sent at 10:36 A.M. E.S.T. the same day. Email No. 8 was copied to Carboni (oscarfutures@yahoo.com) and to me, asking us to "confirm that there are no costs." Isaacson also said that he had not heard anything about the error Carboni alleged.

13. Carboni's charge in Email No. 7 that RJO had failed to execute a transaction was entirely false. A trading error had indeed occurred that day, but it was a pit broker's error and did not even involve an RJO customer. I responded immediately and at 10:47 A.M. E.S.T. that morning I sent Email No. 9, the email quoted in the Amended Complaint. (Email No. 9 in Exhibit B carries a time stamp of 9:47 A.M., because that is how it displayed on Epstein's computer in Chicago: 10:47 A.M. Eastern time is 9:47 A.M. Central time.)

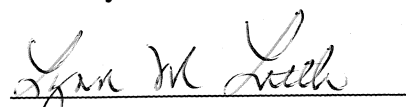
14. In Email No. 9, I set the record straight, copying everyone who had received Email No. 8 and explaining that RJO had nothing to do with the error Carboni falsely ascribed to RJO. I also called Carboni a "scumbag" for trying "to generate business off other people's perceived misfortune," which is what he appeared to be doing in sending his false report to Epstein.

15. Carboni's email disparaged RJO's ability to conduct its business on the Exchange and falsely claimed that RJO had mishandled a transaction on the Exchange.

16. Epstein responded to Email No. 9 in a private email to me, Email No. 10, saying that he was "certain [Carboni] did not do this in a harmful way." In my reply, Email No. 11, I told Epstein that I was "all for moving on, principles over personalities."


ROBERT M. LAKE

Sworn to before me this
15th day of March, 2007.


Notary Public

LYNN M. LITTLE
Notary Public, State of New York
No. 01L-16043500
Qualified in Kings County
Commission Expires June 19, 2010
Certification File in NY County

Exhibit A
to Lake Affidavit

Email Chain

From: Bob Lake
Sent: Tuesday, December 13, 2005 11:53 AM
To: 'Ira Epstein'
Subject: RE: RJO O'Brien

Ira,

I'm all for moving on, principles over personalities

bob

-----Original Message-----

From: Ira Epstein [mailto:ira@iepstein.com]
Sent: Tuesday, December 13, 2005 11:23 AM
To: Bob Lake
Subject: RE: RJO O'Brien

Bob, I believe this was never meant as anything bad. Quite the opposite.

As you know I was with Man Financial for over a decade. They had monster issues. It happens. With Man there were times when I did not get fills for over a week in metals. Sugar once ended up 3 weeks. They made good on everything. I had my hands full, but as you will discover, I am a true team player and stand behind my clearing firm and their affiliates. Check my reputation out. You will find what I say is true.

On ATC's move to RJO we missed fill reports for several days. I did not cause an uproar, never said anything derogatory and understood that changes create issues. That's how the business works. That is part and parcel to our business.

The good news is that it was not an RJO issue. Had it been, I still would have understood. I have personally known the O'Brien's my whole trading life. I worked for them 20 some odd years ago. Good people.

When ATC told me that they were moving their business to O'Brien, I applauded the move. Given what will eventually happen with Refco and Man, I applaud it even more.

I am certain Oscar did not do this in a harmful way. That is not the man's character. He heard of the error and reported it to me. That simple. If his facts were wrong, we've both seen that before. After 35-years in the business, I've seen enough to say that "we've all been there and done that". Life is too short to spend time on things like this.

Let's move forward.

From: Bob Lake [mailto:blake@rjobrien.com]
Sent: Tuesday, December 13, 2005 9:47 AM
To: Barry Isaacson; ira@iepstein.com
Cc: ChuckB@iepstein.com; oscarfutures@yahoo.com; Gary Weber; Lenny Sowa
Subject: RE: RJO O'Brien

Gentlemen,

I hope you will excuse the vulgarity that follows. This error was not RJO's error it was the pit brokers clerk that forgot to book the order. In any event they made the customer whole (not an RJO customer). I do not do business with scumbags that try to generate business off other people's perceived misfortune. This little prick can twist in the wind before he touches one piece of RJO paper. I am now in the process of burying this guy in the pit and on Comex in general, let's see how good the fills are when no one will trade with him.

Bob Lake

-----Original Message-----

From: Barry Isaacson [mailto:bisaacson@alaron.com]

Sent: Tuesday, December 13, 2005 10:36 AM

To: ira@iepstein.com

Cc: ChuckB@iepstein.com; oscarfutures@yahoo.com; Gary Weber; Lenny Sowa; Bob Lake

Subject: FW: RJO O'Brien

Ira

For some reason I have not been receiving some of your e-mails, I will have Bob and Oscar confirm that there are no costs. I didn't hear anything about that error, however if it really did happen I'm quite sure that RJO is good for it.

Ira please forward me your other unanswered e-mails that I seem to have neglected so that as we are transitioning your points of contact my slate is clean.

Thanks

Barry

-----Original Message-----

From: Ira Epstein [mailto:ira@iepstein.com]

Sent: Tuesday, December 13, 2005 9:10 AM

To: Barry Isaacson

Subject: RE: RJO O'Brien

Thanks for responding. I do mean thanks.

In my last e-mail I asked "What costs are you talking about"?

In speaking with Bob Lake and Oscar, I see no additional costs. Bob figured out a way to circumvent TOPS, eliminating the TOPS cost. RAN of course still exists and floor brokerage through Oscar exists. I assume that RJO has a fee for NY clearing. My understanding is that all of this is already in place and being charged. Therefore I do not see any new fees?. What else is there that I am missing? I do not want to be blind sided.

If something does go wrong, I understand it will be between IECo and Oscar. Barring that, what else do you see that I am missing.

Through an introduction from me, Gordy Linn has been using Oscar for a very long time. He likes the personal service Oscar brings. The metal fund business I am developing will require at times hands on fills for some of their larger orders. Oscar should fit the bill.

While I am certain RJO is good, I received the following e-mail today from Oscar. Pretty scary if true.

Ira,

Yesterday in the Silver futures RJO is so buried with paper they forgot, that's right forgot to execute buying 600 march silver @ 877.00. It cost them 390,000.00

Please be careful using them for executions as they are way to busy to handle the paper load and continue to pick up old refco business as of this writing. I hope we can get our business completed this week and get you away from that atmosphere

I will contact Bob Lake today. Ill keep you informed.

Oscar Carboni
President C.O.M. Trading Inc.

From: Barry Isaacson [mailto:bisaacson@alaron.com]
Sent: Tuesday, December 13, 2005 8:57 AM
To: Ira Epstein
Cc: Bob Lake; ChuckB@iepstein.com; Scott Slutsky; Gary Weber; Jason Carver
Subject: RE: RJO O'Brien

Ira

Based on a recent conversation with Scott Slutsky, you would like for this to be implemented with the terms stated below as far as liability and costs are concerned. If there was a response to my email below I apologize for not having seen it. Please confirm that you would like this arrangement to be initiated.

Barry

-----Original Message-----

From: Barry Isaacson
Sent: Wednesday, December 07, 2005 3:59 PM
To: 'Ira Epstein'
Cc: 'Bob Lake'
Subject: RE: RJO O'Brien

Ira

From I what I have been able to gather on this is that a printer could be provided for Oscar to receive your orders, however Alaron or RJO will not assume any costs associated with this or take any liability for those orders as far as execution is concerned. Not sure how long it would take to set up but if you want me to investigate the time and any costs involved I will.

Thanks

Barry

-----Original Message-----

From: Ira Epstein [mailto:ira@iepstein.com]
Sent: Wednesday, December 07, 2005 2:53 PM
To: Barry Isaacson
Subject: FW: RJO O'Brien

Barry;

I need an answer on what to do. A lot of this has to do with the Hedge Fund business I am getting for the metal markets.

It's one thing to criticize me if I broke an ATC policy, which I did not realize I had done per my other e-mails. However, not responding to me about this is another matter entirely.

From: Oscar Carboni [mailto:oscarfutures@yahoo.com]
Sent: Wednesday, December 07, 2005 2:32 PM
To: Ira Epstein
Subject: RE: RJO O'Brien

Ira,

Do you know which steps need to be taken to satisfy Barry's request to go through proper channels? I believe the ball is in your court at present. I have all the necessary equipment to accommodate your Comex business already in place if we choose Tops. I have not heard of a tops order charge in the past but maybe Bob Lake from RJOBrien knows something we are unaware of. Bob Lake called me today to say this would be very easily done with Barry's approval. I'm looking forward to a very prosperous relationship with your firm.

Please convey your thoughts on this matter.

All the best,

Oscar Carboni

President C.O.M.Trading inc

Ira Epstein <ira@iepstein.com> wrote:

Let's start off with what I believed was going on.

I was lead to believe I was doing this with ATC permission to do so. According to Oscar Carboni, Len Sowa was and is fully in the loop on all of this. Oscar called me yesterday and told me that Bob Love at RJO needed to speak with me. A call was made into Bob after Oscar told me that Len was fully in the loop and all Bob needed was my permission. That is what I believed the call was about.

I would never do this or anything like it without having good reason to fully believe that the ATC people had already approved of this and were in the loop on me making the call. Ask Len. Given all his years with me I am sure he will tell you I would never do something like this unless I believed all I was doing was approving something my clearing firm had already approved.

From: Barry Isaacson

[mailto:bisaacson@alaron.com]

Sent: Wednesday, December 07, 2005 10:29 AM

To: Ira Epstein

Cc: Gary Weber; John Hackner; Dan Lazarus

Subject: RJO O'Brien

Ira

Just because in your mind I get nothing done around here, doesn't give you the right to contact our representative at RJO and request for your orders to be routed to a specific broker. Just as you would not want your clients contacting your vendors I can not have our clients or brokers contacting our vendors directly. If there is a request that you are interested in pursuing I would appreciate it if you would either contact Gary or our IB services to see if it can be accommodated.

I do need for you to go through the proper channels as we are ultimately responsible for how and where are orders are routed.

Thank you for your cooperation on these types of issues.

Barry

Yahoo! Personals

Single? There's someone we'd like you to meet.

Lots of someones, actually. [Yahoo! Personals](#)

Yahoo! Shopping

Find Great Deals on Gifts at [Yahoo! Shopping](#)

Exhibit B
to Lake Affidavit

Email Chain Placed in Order and Numbered

EMAIL NO. 1

From: Barry Isaacson [mailto:bisaacson@alaron.com]
Sent: Wednesday, December 07, 2005 10:29 AM
To: Ira Epstein
Cc: Gary Weber; John Hackner; Dan Lazarus
Subject: RJO O'Brien

Ira

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EMAIL NO. 2

Ira Epstein <ira@iepstein.com> wrote:

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EMAIL NO. 3

From: Oscar Carboni [mailto:oscarfutures@yahoo.com]
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Please convey your thoughts on this matter.

All the best,

Oscar Carboni
President C.O.M.Trading inc

EMAIL NO. 4

4. From: Ira Epstein [mailto:ira@iepstein.com]
Sent: Wednesday, December 07, 2005 2:53 PM
To: Barry Isaacson
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I need an answer on what to do. A lot of this has to do with the Hedge Fund business I am getting for the metal markets.

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EMAIL NO. 5

From: Barry Isaacson
Sent: Wednesday, December 07, 2005 3:59 PM
To: 'Ira Epstein'
Cc: 'Bob Lake'
Subject: RE: RJO O'Brien

Ira

From I what I have been able to gather on this is that a printer could be provided for Oscar to receive your orders, however Alaron or RJO will not assume any costs associated with this or take any liability for those orders as far as execution is concerned. Not sure how long it would take to set up but if you want me to investigate the time and any costs involved I will.

Thanks

Barry

EMAIL NO. 6

From: Barry Isaacson [mailto:bisaacson@alaron.com]
Sent: Tuesday, December 13, 2005 8:57 AM
To: Ira Epstein
Cc: Bob Lake; ChuckB@iepstein.com; Scott Slutsky; Gary Weber; Jason Carver
Subject: RE: RJO O'Brien

Ira

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EMAIL NO. 7

From: Ira Epstein [mailto:ira@iepstein.com]
Sent: Tuesday, December 13, 2005 9:10 AM
To: Barry Isaacson
Subject: RE: RJO O'Brien

Thanks for responding. I do mean thanks.

In my last e-mail I asked "What costs are you talking about"?

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From: Barry Isaacson [mailto:bisaacson@alaron.com]
Sent: Tuesday, December 13, 2005 10:36 AM
To: ira@iepstein.com
Cc: ChuckB@iepstein.com; oscarfutures@yahoo.com; Gary Weber; Lenny Sowa; Bob Lake
Subject: FW: RJO O'Brien

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Ira please forward me your other unanswered e-mails that I seem to have neglected so that as we are transitioning your points of contact my slate is clean.

Thanks

Barry

EMAIL NO. 9

9. **From:** Bob Lake [mailto:blake@rjobrien.com]
Sent: Tuesday, December 13, 2005 9:47 AM
To: Barry Isaacson; ira@iepstein.com
Cc: ChuckB@iepstein.com; oscarfutures@yahoo.com; Gary Weber; Lenny Sowa
Subject: RE: RJO O'Brien

Gentlemen,

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Bob Lake

EMAIL NO. 10

From: Ira Epstein [mailto:ira@iepstein.com]
Sent: Tuesday, December 13, 2005 11:23 AM
To: Bob Lake
Subject: RE: RJO O'Brien

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I am certain Oscar did not do this in a harmful way. That is not the man's character. He heard of the error and reported it to me. That simple. If his facts were wrong, we've both seen that before. After 35-years in the business, I've seen enough to say that "we've all been there and done that". Life is too short to spend time on things like this.

Let's move forward

EMAIL NO. 11

From: Bob Lake
Sent: Tuesday, December 13, 2005 11:53 AM
To: 'Ira Epstein'
Subject: RE: RJO O'Brien

Ira,

I'm all for moving on, principles over personalities

bob